ANTI-JAPANESE LEGISLATION IN CALIFORNIA, AND THE NATURALIZATION OF THE JAPANESE.

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When in 1906, the San Francisco School Board adopted a policy segregating the Japanese school children from the American school children, Japan protested upon the ground that it was unjust discrimination. By such action, we were not giving her the rights and privileges of the "most favored nation," which she claimed were guaranteed under the treaty of 1894. Her protest was listened to with respect, a few Californians hastened to Washington to confer with President Roosevelt, and the policy of the Board was abandoned.

In 1913 there was passed by the legislature of California a bill, the purpose of which was to exclude from land ownership within the State those ineligible to citizenship. Japan protested upon the ground that the law, if passed would deny to her subjects the rights and privileges guaranteed by Article I of the treaty of 1911.

This article reads as follows: "The citizens or subjects of each of the high contracting parties shall have liberty to enter, travel, and reside in the territories of the other to carry on trade, wholesale and retail, to own or lease and occupy houses, manufactories, warehouses, and shops, to employ agents of their choice, to lease land for residential purposes and generally to do anything incident to or necessary for trade upon the same terms as native citizens or subjects, submitting themselves to the laws and regulations there established. They shall not be compelled under any pretext whatever, to pay any charges other or higher than those that are or may be paid by native citizens or subjects.

"The citizens or subjects of each of the high contracting parties shall receive in the territories of the other, the most constant protection and security for their persons and property, and shall enjoy in this respect the same rights and privileges as are or may be granted to native citizens or subjects, on their submitting themselves to the conditions imposed upon the native citizens or subjects."

The immediate question that arises is this: Does this provision give to the subjects of Japan the right to purchase and hold land to be used for agricultural purposes? We think not, but granting for

the moment that it does, what would be the legal status of a state law which would deny to the subjects of Japan such a privilege?

We hold that the law on this point is clear and defined. The Federal Constitution, Article VI., Section 2, provides: "This Constitution, and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding." But, it is asked, may the Federal government interfere by treaty provision with matters that are ordinarily within the province of the State Government? No one will deny the power of the states to legislate upon the question of land ownership, but if such legislation conflicts with some treaty provision we hold it to be invalid. It is interesting to note that this principle was upheld by the Supreme Court of California in a decision rendered October 23, 1855, 1855, in the case of People vs. Gerke, (5 Calif. 381, Sup. Court Reports). On August 23, 1853, one Auguste Deck, a citizen of Prussia, died intestate in the city of San Francisco, leaving undisposed of a large amount of real estate. On the 14th of September following, letters of administration were granted by the Probate Court to the defendant Gerke. An information was filed by the attorney-general in the court below (District Court), citing the defendants to show cause why Deck's estate should not escheat to the State of California. The Courts below entered judgment in favor of the people. The defendant appealed. The Court rendered the following decision: "The 14th Article of the convention entered into between the United States and Prussia, in 1828, provides that "When in the death of any person holding real estate within the territory of one party, such real estate would, by the laws of the land, descend on a citizen or subject of the other, were he not disqualified by alienage, such citizen or subject shall be allowed a reasonable time to sell the same, and to withdraw the proceeds without molestation. This treaty is valid and is capable of being maintained in the face of any state legislative enactment."

CASES TO SUPPORT THIS.

2 Story's Com. on Constitution, p 314, par. 1508, Chirac v. Chirac, 2 Wheaten 259, Orr v. Hodgson, 4 Wheaton 453, 8 Wheaton 464, 9 Wheaton 489, 10 Wheaton 181, 3 Peters 242.

"These are cases where aliens have claimed to inherit by virtue of treaty provisions and the stipulations have been enforced in favor of foreign claimants. Aside from the limitations and prohibitions of the Constitution upon the powers of the Federal Government, the power of treaty was given, without restraining it to

particular objects, in as plenipoteniary a form as held by any sovereign in any other society. One of the arguments at the bar against the extent of this power of treaty is, that it permits the Federal government to control the internal policy of the states, and, in the present case, to alter materially the statutes of distribution. If this were so to the full extent claimed, it might be a sufficient answer to say, that it is one of the results of the compact, and, if the grant be considered too improvident for the safety of the state, the evil can be remedied by the constitution-making power. Even if the effect of this treaty-making power was to abrogate to some extent the legislation of states, we have authority for admitting it, if it does not exceed certain limitations of the instrument itself."

In the cases already cited, those of Chirac v. Chirac, 2 Wheaton, 259, Cavneac v. Banks, 10 Wheaton 189, the Supreme Court of the United States laid down the principle that when treaties with foreign countries secured to the citizens and subjects of either power the privilege of holding lands in the territory of the other, all state laws denying such privilege were invalid.

Again, we have such an eminent authority as Hon. Emlin McClain to support this theory. In his treatise, "Constitutional Law in the United States," p. 216, Section 136, we find the following statement regarding the treaty-making power: "The provisions of a treaty which it is within the power of the Federal Government to make will be superior in authority to any state statute relating to the same subject matter. Thus, as the rights of the subjects of foreign governments to acquire by purchase or inheritance property within the limits of the United States is a proper subject to be regulated by treaty between this government and such foreign governments, the states cannot by legislation deprive the subjects of foreign governments of property rights guaranteed to them by treaty. It is within the general power of the states to determine to what extent, if at all, aliens may acquire and enjoy property rights under state laws. In many states non-resident aliens are forbidden from acquiring real property by purchase or inheritance. Nevertheless, so far as such state statutes may interfere with the rights of an alien under a treaty between this government and the government of which such alien is a subject, the state law must give way, and if under the treaty the alien is entitled to acquire or own property, by inheritance or otherwise, he may enjoy that right, and it will be protected by the courts, although it is in contravention of the law of the state where the property is situated."

We think the cases and authorities cited to be sufficient evidence to show that the Federal government is supreme in the matters under discussion.

The bill passed by the California legislature avoids the phrase "ineligible to citizenship" by providing two descriptions of aliens and defining the rights of each, as follows: Section 1. "All aliens eligible to citizenship under the laws of the United States may acquire, possess, enjoy, transmit, and inherit real property, or any interest therein, in this state, in the same manner and to the same extent as citizens of the United States, except as otherwise provided by the laws of this state." Section 11. "All aliens other than those mentioned in section one of this act may acquire, possess, enjoy, and transfer real property or any interest therein, in this state, in the manner and to the extent and for the purposes prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise, and may in addition thereto lease lands in this state for agricultural purposes for a term not exceeding three years."

As the present treaty between the United States and Japan specifies that the Japanese may own and occupy houses, manufactories, warehouses and shops, and to lease land for residential purposes, this law is held to be a rigid restriction upon the acquisition of farming lands by Japanese.

Some of the Progressive leaders in the legislature, according to dispatches, admitted that the law would be ineffective if the Japanese brought a test suit before the United States Supreme Court, according to their announced intention, and were successful in establishing their right to become citizens. This brings up the whole question of the eligibility of the Japanese to become American citizens and a word or two ought to be said concerning it.

Contrary to a number of newspaper reports, and popular opinion, there is no specific federal statute excluding the Japanese from naturalization. Where we have denied them this privilege it has been done by the courts in interpreting the phrase "white persons" as found in our naturalization laws.

The first naturalization act was approved in March, 1790 (I. Statute 103). By section I. of this act it is provided "that any alien being a free white person may be admitted to become a citizen." This law was repealed and new restrictions made by the act approved January 29, 1795 (I. Statutes 414), which was in turn repealed by the act of April 14, 1802. Both of these last named acts confined naturalization to aliens being free white persons.

This rule continued in force until 1870, when the law was amended to include aliens of African nativity, and persons of African descent. It reads as follows: "The provisions of this title shall apply to aliens of African nativity, and persons of African de-

scent." Five years later (1875) this section was so amended as to include free white persons and the law as amended and now in force is as follows: "The provisions of this title shall apply to aliens being free white persons, and to aliens of African nativity and to persons of African descent." (Revised Statutes 2169.)

Different interpretations have been put upon this statute by the courts. Thus in 1893, in the case of Saito vs. United States (62 Fed. 126), the Circuit Court of the United States for the district of Massachusetts laid down the theory that the Japanese do not come within the meaning of the term "white persons" as used in our naturalization laws. Shebato Saito, a native of Japan, applied for naturalization papers and his application was denied by the Court upon the following grounds: "The act," held the court, "relating to naturlization, declares that the provisions of this title shall apply to aliens being 'free white persons, and to aliens of African nativity and persons of African descent.' The Japanese like the Chinese, belong to the Mongolian race, and the question presented is whether they are included within the term 'white persons.' The court rules that the statute must be taken in its ordinary sense, and that the application of Shebato Saito must be denied upon the ground that he was of the Mongolian race and that the term 'white person' excluded the Mongolian race, and therefore the application is denied."

The courts have applied the same ruling touching the Burmese. Thus in the case of Sanc Po, (38 New York Supplement 383), a native of British Burmah, the court ruled that the Burmese are Malays, and under modern ethnological subdivisions are Mongolians. "The petitioner," continues the court, "falls squarely within the provisions of Section 2169, United States Revised Statutes, which limit a naturalization to free white persons and to persons of African nativity and African descent; for he is neither."

Again in the case of Kanaka Nian (21 Pac. 993), a native of the Hawaiian Islands, the defendant was refused citizenship because he was not white.

On the other hand, at least a score of Japanese have been admitted to American citizenship by the Courts. A notable example is the distinguished international lawyer, author, and editor, Misuji Miyakawa, who holds the degree of LL. D., from Indiana State University, and D. C. L. from the University of Paris. Dr. Miyakawa was chief counsel for the Japanese in the famous school controversy in California and counsel for Japan in the Bering Sea seal controversy.

Dr. Miyakawa is the authority for the statement that the Japanese have been admitted to citizenship for twenty years and that

there are at least a dozen Japanese in New York city who are American citizens. He points out further that the Japanese have been admitted to full-fledged citizenship in Federal or state courts in Indiana, Florida, Arizona, California, and New York.

Coming nearer home we have the case of U. S. Kaneko, a native of Japan, who became an American citizen in 1896. Mr. Kaneko is now living at 636 West Eighth street, Riverside, California. Below is a copy of the record of the Court that granted him the naturalization papers.

DECLARATION OF INTENTION.

UNITED STATES OF AMERICA.

State of California.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
County of San Bernardino.

I, Ulysses S. Kaneko, do declare on oath, that it is my bona fide intention to become a citizen of the United States of America; and to renounce forever all allegiance and fidelity to all foreign Princes, Potentate, State and Sovereignty whatsoever, and particularly to the Emperor of Japan.

(Signed) ULYSSES S. KANEKO.

Subscribed and sworn to before me, this 9th day of February, A. D. 1892.

(Signed) GEORGE L. HISOM, Clerk.
By G. R. FREEMAN, Dep. Clerk.

FINAL PAPERS.

UNITED STATES OF AMERICA.

State of California.

In the Superior Court of the County of San Bernardino,
State of California.

Present Hon. Geo. E. Otis, Judge.

This is to certify, that on this 27th day of March, 1896, it appearing to the satisfaction of this Court, by the oaths of J. W. F. Diss and E. G. Judson, citizens of the United States of America, witnesses for that purpose, first duly sworn and examined, that Ulysses S. Kaneko, a native of Japan, resided in the United States of America three years next preceding his arriving at the age of twenty-one years, and that he has continued to reside in the United States to the present time and has resided within the limits and under the jurisdiction of the United States five years at least, last past, and that during all of said five years time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order

and happiness of the same, and said applicant has declared his intention to become a citizen of the United States, and having now here before this court, taken an oath he will support the Constitution of the United States of America and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every sovereign Prince, Potentate, State or Sovereignty whatsoever, and particularly to Mutsuhito, Emperor of Japan. It is therefore ordered, adjudged, and decreed, that the said Ulysses S. Kaneko, be, and he is hereby admitted and declared to be a citizen of the United States of America.

Attest: J. W. F. DISS, Clerk.

GEO. E. OTIS, Judge.

(Seal)

By L. A. PFEIFFER, Deputy Clerk.

To sum up: The Japanese are not excluded from naturalization by specific federal statutes, but only by the interpretation that the courts have put upon the laws, and, as we have seen, these rulings have not been uniform. The only race excluded by special statute is the Chinese.

Thus far it has been largely an ethnological question with the courts. The matter might be finally settled in favor of the Japanese in one of two ways. First, the Supreme Court of the United States could interpret the Federal statutes in such a way as to include the Japanese within the term "white persons"; or secondly, Congress might pass a law granting to them the privilege of becoming naturalized.

Legally speaking, every nation has the right to determine what aliens, if any, it will admit into the body politic; but in the absence of treaties governing these matters there is always a moral responsibility resting upon the nation to treat with justice and fairness the aliens who come within its borders.